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In the Supreme Court of the United States

OCTOBER TERM, 1975

THE SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA,
a Religious Body, et al.,
Petitioners,

vs.

DIONISIJE MILIVOJEVICH, et al.,
Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Unfortunately, Respondents' Brief contains a large number of misstatements concerning the contentions of Petitioners, the evidence in the record, and the content of judicial decisions in this case and related cases. Practical limitations on the length of this Reply Brief permit us to note only those misstatements which are particularly significant to the major arguments advanced in opposition to the Petition.

Respondents make four principal arguments. We will reply briefly to each.

I.

RESPONDENTS' QUIBBLES ABOUT THE HIERARCHICAL NATURE OF THE SERBIAN ORTHODOX CHURCH ARE UNFOUNDED.

The Petition noted that this Court has required recognition of the decisions of the highest authorities in hierarchical churches and that the Mother Church is clearly a hierarchical Church. Respondents now appear to dispute the "hierarchical" designation or to argue that the witnesses used "hierarchical" in a different sense than the definition adopted by this Court. This is an unsound attempt to wriggle out of the serious constitutional questions posed by the Illinois Supreme Court's decision.

The Illinois Supreme Court had no such doubts and quibbles. That Court stated (328 N.E.2d at 280):

> "Plaintiffs argue and defendant Bishop Dionisije does not dispute that the Serbian Orthodox Church is a hierarchical and episcopal church. Moreover, the parties agree that in cases involving hierarchical churches the decisions of the proper church tribunals on questions of discipline, faith or ecclesiastical rule, though affecting civil rights, are accepted as conclusive in disputes before the civil courts."

Furthermore, Respondents' "non-hierarchical" arguments contain a basic fallacy. Those arguments are predicated upon some disputed contentions concerning the "autonomy" of the American-Canadian Diocese in governing its internal affairs. But the principal issue raised by the Petition (as is obvious from any reading of the Petition) concerns the unprecedented action of the Illinois Supreme Court in invalidating the Mother Church's disciplinary proceedings against one of its Bishops and in effect requiring the reinstatement of that Bishop. Respondents'

arguments do not touch the principle of hierarchical authority as it relates to the appointment and status of the Bishop or to his authority over the Diocese.

Each Bishop of the American-Canadian Diocese has been elected and appointed by the Mother Church without any prior consultation or approval by the members of the American-Canadian Diocese. Indeed, prior to 1963 each Bishop appointed by the Holy Assembly was a Yugoslav cleric.

Furthermore, the broad powers of the Bishop of the American-Canadian Diocese, who is concededly appointed only by the Mother Church, demonstrate clearly the hierarchical nature of the Church organization even within the Diocese itself. The Bishop has sole power to ordain priests, to consecrate new churches and to appoint the members of the Ecclesiastical Court. He can veto any decisions of the Ecclesiastical Court, the Council, and other Diocesan officials, and require reconsideration. In the event of continued disagreement between the Bishop and the other Diocesan authorities, the issue is referred to the Holy Synod of the Mother Church for resolution. The Bishop occupies the See of the Diocese and has sole authority to convene Diocesan Sabors (Assemblies). He appoints priests to all churches and resolves disputes between priests and congregations. All monastery property is under the direct control of the Bishop. (A. 1447, 1449, 1451, 1460, 1462, 1481-3, 1492).

II.

RESPONDENTS' ARGUMENT THAT DIONISIJE'S REMOVAL IS A DIOCESAN PROPERTY RIGHT ISSUE IS FALSE AND CONTRARY TO RESPONDENTS' OWN ARGUMENTS IN THE LOWER COURTS.

In an effort to fit this case into the "property rights" pigeonhole, Respondents go to the extreme of arguing that all issues, including Dionisije's removal, involve a plot to misappropriate Diocesan assets. That is unsupported by the record and contrary to Respondents' own arguments in the lower courts.

It requires no argument to demonstrate that Respondents' contention is a bald distortion of the issues raised by the Petition and of the Opinion of the Illinois Supreme Court. Both of those documents discuss principally the issue of Dionisije's removal and in no way treat that issue as related to the question of Diocesan reorganization.

Indeed, while Respondents now seek to convince this Court that Dionisije's removal was an inextricable part of so-called "property" issues, Respondents took precisely the opposite position in the Illinois Supreme Court. The Brief of Respondents other than Dionisije (which has been filed as a part of the Record) stated at Page 18:

> "The only other issue is the propriety of the deposition and defrockment of Bishop Dionisije, and that, as we will point out later, is a matter entirely unrelated to the question of whether the corporate defendants are entitled to retain their assets and their autonomy."

Respondents stated at Page 22 of the same Brief:

> ". . . However this Court may decide the case involving Bishop Dionisije, that decision will not be dispositive of the case as it pertains to these remaining defendants. This is because Belgrade stands in a completely different relationship to Bishop Dionisije

> than it does to these defendants. Dionisije holds an office in Belgrade's hierarchy and, under the rules to which he submitted when he accepted that office, he is clearly subject to Belgrade's disciplinary jurisdiction. If cause exists, and if the proper procedures are followed, it cannot be denied that Belgrade has the power to depose and defrock Bishop Dionisije. However, that has no bearing upon the right of these defendants to their continued existence and autonomy."

Respondents' attempts to characterize the Illinois Supreme Court's decision requiring the reinstatement of Dionisije as a Bishop as a resolution of local Church "property rights" is a sham, and a belated sham at that.

Furthermore, Respondents' attempted analogy between this case and a dispute concerning the property of a local church congregation is clearly invalid. The appointment and removal of a Bishop cannot be other than an ecclesiastical issue; it is not transformed into a property dispute merely because the legitimate Bishop will necessarily have possession of a Monastery which is the Diocesan See. *See, Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church,* 344 U.S. 94, 121 (1952), quoted in the Petition at pp. 17-18.

Finally, Respondents' charges that Petitioners' intend to misappropriate Diocesan assets is utterly false. The Record references cited by Respondents do not support the charges made in their Brief and the statements made are grossly inaccurate. The length of this Reply Brief does not permit detailed rebuttal at this time. However, we refer the Court to our Appellees' Brief in the Illinois Supreme Court, (pp. 35-39, 49-52, 95-102) and to our Reply Brief on the Cross-Appeal in that Court (pp. 2-4).

As we noted in the Petition (page 26), Petitioners have always asserted that the Diocesan property is and must be held in trust for the benefit of the members of the Serbian Orthodox Church in the United States and Canada.

III.

NOTHING IN RESPONDENTS' BRIEF DETRACTS FROM THE CONCLUSION THAT THE ILLINOIS SUPREME COURT'S DECISION REQUIRING REINSTATE OF A BISHOP IS UNPRECEDENTED AND IN VIOLATION OF PETITIONERS' CONSTITUTIONAL RIGHTS.

The Petition is based upon the position that the action of the Illinois Supreme Court in parsing internal Church regulations and procedures and invalidating disciplinary proceedings against a Bishop exceeded the limited scope of review of hierarchical Church rulings permitted by this Court's decisions. On this point Respondents' Brief merely contends (pp. 10-11) that the Illinois Supreme Court was correct in determining that the disciplinary proceedings concerning Dionisije violated internal Church regulations as to several of the twelve alleged procedural errors Respondents list.

As we noted in the Petition (page 19), we decline to be drawn into a detailed discussion of each of these twelve items. We do not ask this Court to grant certiorari for the purpose of determining these questions of internal Church procedure. On the merits of those questions it suffices to say that the Holy Assembly determined and Petitioners' expert witnesses testified that there was no violation of internal Church regulations as to any of these matters. The points are argued in detail in our Brief before the Illinois Supreme Court. *See* pp. 70-85.

The issue presented by the Petition is whether the Federal Constitution permits State courts to adopt their own construction of internal Church regulations—when that construction is contrary to that adopted by the Church authorities themselves. The issue is whether the Constitution permits State courts to engage in detailed "administrative review" of ecclesiastical proceedings.

Finally, and perhaps most important, Respondents' Brief completely ignores Dionisije's refusal to cooperate or participate in any stage of the ecclesiastical proceedings and his action in taking the issue instead to the civil courts. The evidence noted in detail at pages 7-10 of the Petition (and not contradicted in any way in Respondents' Brief) shows that Dionisije repudiated the authority of the Church, announced his refusal to participate in the proceedings, and took the matter to the civil courts long before many of the procedural matters of which he now complains had occurred.

Respondents' Brief ignores the right of the Mother Church to try Dionisije's case as a default matter under those circumstances and to base its decision of removal and defrockment in part upon his open and admitted acts of defiance. Respondents' Brief ignores the serious constitutional issue raised by the Illinois Supreme Court's use of its own notions of "due process" to reward Dionisije by reinstatement for his refusal to participate in the ecclesiastical proceedings of the Church of which he was a Bishop.

IV.

RESPONDENTS' CHARACTERIZATION OF THE RELATED CASES IS FALSE.

Respondents attempt to brush aside the Serbian Church cases in jurisdictions other than Illinois cited in the Petition at pages 27-28, by asserting that those cases did not involve the issues before the Illinois Supreme Court or that the courts decided those issues against petitioners. Respondents' characterization is false. Without going into detail, we refer the Court, as examples, to two reported decisions. In *Draskovich* v. *Pasalich*, 280 N.E. 2d 69 (Ind. App. 1972), *reh. den.*, 285 N.E. 2d 830 (1972), *cert. denied*, 414 U.S. 976 (1973), the Indiana Court held that the Mother Church is hierarchical, both in general and in re-

lation to the American-Canadian Diocese. The Court also recognized the validity of the Diocesan reorganization. See also, *Serbian Eastern Orthodox Congregation* v. *Serbian Eastern Orthodox Congregation*, 254 A. 2d 119 (1969), *cert. denied*, 54 N.J. 516, 257 A. 2d 113 (1969), *cert. denied* 397 U.S. 961 (1970), in which the New Jersey Court concluded that there was no basis, either under this Court's decisions or on the evidence, to invalidate the Diocesan reorganization. In both these cases the Courts stated that there could be no review or remedy in the civil courts with respect to the removal proceedings against Dionisije.

CONCLUSION

We respectfully pray that the Petition be granted and that Respondents' Conditional Cross Petition be denied.

Respectfully submitted,

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